

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 21812
)	
BERLY VALLADARES,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Lavin and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County denying defendant leave to file a successive postconviction petition is affirmed where defendant failed to satisfy the cause and prejudice test.

¶ 2 Defendant Berly Valladares, appeals from the denial of his *pro se* motion for leave to file a successive petition for relief under the Post-Conviction Hearing Act (the Act) (725 ILCS 5/122-1 *et seq.* (West 2016)). He contends the trial court erred in denying him leave to file his successive petition because he satisfied the cause-and-prejudice test. We affirm. The circuit court

did not err in denying Valladares leave to file a successive postconviction petition because he has failed to satisfy either element of the cause and prejudice test.

¶ 3 Background

¶ 4 Following a 2010 jury trial, Valladares was found guilty of the first degree murder of Francisco Valencia (720 ILCS 5/9-1(a) (1) (West 2010)); and the aggravated battery with a firearm of Daisy Camacho (720 ILCS 5/12-4.2(a) (1) (West 2010)). Co-defendant Narcisco Gatica, who is not a party to this appeal, also was tried and convicted of this offense. On direct appeal, his conviction was affirmed. *People v. Gatica*, 2013 IL App. (1st) 113361-U). Valladares was sentenced to consecutive, respective terms of 55 and 15 years' imprisonment. We affirmed Valladares's convictions on direct appeal. *People v. Valladares*, 2013 IL App (1st) 112010. We recount the background to the extent necessary to resolve the issue before us.

¶ 5 The jury found Valladares guilty of first degree murder and aggravated battery with a firearm. Valladares, who was represented by two attorneys at trial, filed a motion for new trial with a different attorney than his trial counsel. In his motion, Valladares alleged, among other allegations, that his trial counsel was ineffective for failing to file a motion to suppress his statement to the police as well as not objecting to the introduction of gang testimony.

¶ 6 A hearing was held on the motion for new trial. Valladares's trial counsel testified as to their strategy in allowing Valladares's statement to be admitted without filing a motion to suppress as well as to the gang information being admitted. Trial counsel testified that their defense was that while Valladares gave the gun to Gatica, he did not know what Gatica intended to do with the handgun and, therefore, could not be accountable for his actions. Thus, Valladares's statement to the police was necessary to show what his actions were on the evening

of the murder. Counsel testified that, if Valladares's statement had not been admitted and Valladares did not testify, the State would have called the gang witnesses that Detective Landando spoke to before Valladares's arrest and Valladares would have been precluded from explaining his actions. Counsel also found that it was necessary to have the gang evidence admitted to show that was the reason for Valladares's actions in giving the gun to Gatica.

¶ 7 At the conclusion of the hearing, the trial court denied Valladares's motion for new trial finding that two experienced trial attorneys represented Valladares and found their decisions to be sound trial strategy.

¶ 8 On direct appeal, Valladares argued that he received ineffective assistance of trial counsel because counsel: (i) failed to meet with him or prepare him to testify; (ii) failed to file a motion to suppress his statements to the police since his statements were highly prejudicial; (iii) and agreed to the admission of prejudicial gang evidence. Valladares also argued that the jury instructions failed to properly instruct the jury as to the law of accountability. Lastly, Valladares argued that the State failed to present corroborating evidence other than his own statement of the *corpus delicti*. We affirmed. *Valladares*, 2013 IL App (1st) 112010. We rejected Valladares's claim of ineffective assistance of counsel finding, in relevant part, that (i) Valladares had sufficient communication with his defense team and (ii) his trial counsels' decisions not to file a motion to suppress and allow gang evidence to be admitted were sound trial strategy.

¶ 9 On May 2, 2014, Valladares filed his initial postconviction petition under the Act. In the petition, Valladares alleged, among other issues, that he received ineffective assistance of trial counsel based on counsel's failure to: interview witnesses at his place of employment; obtain surveillance video from his employer; and request a gag order and a change of venue due to the

extensive media coverage of the case. The court summarily dismissed the petition finding it frivolous and patently without merit. The court noted that Valladares had not met his burden under *Strickland*.

¶ 10 Valladares appealed the summary dismissal, arguing that he presented an arguable claim that the trial court deprived him of full and fair jury deliberations by not further instructing the jury in response to its question asking the court to define the phrase “during the commission of an offense.” We affirmed the summary dismissal of Valladares’s petition. *People v. Valladares*, 2016 IL App (1st) 142721-U. We found that Valladares had forfeited his claim that trial counsel was ineffective for acquiescing to the trial court’s response to the jury note where Valladares did not raise this issue in his petition; preserve it in his posttrial motion; or allege ineffective assistance of appellate counsel.

¶ 11 On June 28, 2016, Valladares filed a motion for leave to file a second successive postconviction petition under the Act and accompanying petition. 725 ILCS 5/122-1(f)(1) (West 2016). In this petition, Valladares argued that he received ineffective assistance of trial counsel based on counsels’ failure to: (i) visit him in jail, (ii) file a motion to suppress his statement to the police, (iii) file a motion to quash his arrest, (iv) show Valladares his videotaped statement to the police, (v) call certain witnesses, (vi) investigate the case and review discovery, (vii) obtain video surveillance from his place of employment, and (viii) object to jury instructions and gang evidence. Valladares also argued that he found newly discovered evidence showing trial counsel’s long standing practice of providing ineffective assistance of counsel and included a copy of a April 11, 2016, report from the Attorney Registration and Disciplinary Commission

(ARDC), finding that trial counsel's incompetence, neglect, misrepresentations, and failure to communicate, supervise, and refund unearned fee in 2014 complaints were founded.

¶ 12 On October 24, 2016, the court entered a written order, denying Valladares leave to file his successive postconviction petition. The court found that Valladares's claims of ineffective assistance of counsel were barred by *res judicata* since he had already raised these claims on direct appeal and in his initial postconviction petition. The trial court also found that Valladares had not met the cause and prejudice test for filing a successive postconviction petition. With regard to Valladares's claim of newly discovered evidence in the ARDC findings, the court noted that Valladares had filed an ARDC complaint against trial counsel. The court pointed out that an investigator from the ARDC was present in court for the hearing on Valladares's motion for new trial and on November 17, 2015, and advised Valladares that the ARDC was not proceeding on his complaint since the trial court did not find that Valladares's trial counsel provided ineffective assistance during Valladares's trial.

¶ 13 On appeal, Valladares contends that the trial court erred when it denied him leave to file his successive postconviction petition. He argues that he satisfied the cause and prejudice test where, in support of his claim of ineffective assistance of counsel, he alleged facts that were unknown to him at the time he filed his initial postconviction petition.

¶ 14 Analysis

¶ 15 The Act contemplates the filing of only one postconviction petition and "expressly provides that any claim of substantial denial of constitutional rights not raised in the original or amended petition is waived." *People v. Guerrero*, 2012 IL 112020, ¶ 15; 725 ILCS 5/122-3 (West 2014). "Consequently, a defendant faces immense procedural default hurdles when

bringing a successive postconviction petition.” *People v. Davis*, 2014 IL 115595, ¶ 14. A defendant seeking to file a successive postconviction petition must first obtain leave of court. *People v. Tidwell*, 236 Ill. 2d 150, 157 (2010); 725 ILCS 5/122-1(f) (West 2014).

¶ 16 The court may grant a defendant leave to file a successive postconviction petition if defendant “demonstrates cause for his failure to bring the claim in his or her initial postconviction proceedings and prejudice results from that failure.” 725 ILCS 5/122-1(f) (West 2014); *Tidwell*, 236 Ill. 2d at 152. Cause is demonstrated if a defendant identifies “an objective factor that impeded his or her ability to raise a specific claim during his or her initial postconviction proceedings.” *People v. Wrice*, 2012 IL 111860, ¶ 48 (quoting 725 ILCS 5/122-1(f) (West 2014)). Prejudice is established “by demonstrating that the claim so infected the trial that the resulting conviction or sentence violated due process.” *Id.* A defendant must establish both elements of the cause and prejudice test in order to prevail. *People v. Sutherland*, 2013 IL App (1st) 113072, ¶ 16. Our review of the trial court’s order denying Valladares leave to file his successive postconviction petition applies the *de novo* standard. *People v. Gillespie*, 407 Ill. App. 3d 113, 124 (2010).

¶ 17 In his motion for leave to file his successive postconviction petition, Valladares claimed that his trial counsel was ineffective. Valladares supplemented his motion with unrelated ARDC complaints that led to one of his trial counsels’ suspension from the practice of law. In this court, Valladares acknowledges that he raised the issue of ineffective assistance of counsel in his direct appeal and in his initial postconviction petition, but asserts that these ARDC complaints were discovered after his initial postconviction petition was filed and therefore are newly discovered,

which “preclude any finding of res judicata and establish both cause and prejudice warranting a successive filing.” We disagree.

¶ 18 After reviewing the record, we find that the court properly denied Valladares’s motion for leave to file his successive petition where he failed to satisfy the cause and prejudice test. As mentioned, cause is established by identifying an objective factor that impeded a defendant’s ability to raise a specific claim during his initial postconviction proceeding. See 725 ILCS 5/122-1(f) (West 2014); *Guerrero*, 2012 IL 112020, ¶ 17 (citing *People v. Jones*, 191 Ill. 2d 194, 198 (2000)) (“Indeed, a ruling on an initial postconviction petition has *res judicata* effect with regard to all claims that were raised or could have been raised in the initial petition”).

¶ 19 The record shows Valladares has raised the issue of his counsels’ ineffective assistance since his posttrial motion for new trial. A hearing was held and both of his trial counsels testified and responded to Valladares’s allegations of ineffective assistance. At the conclusion of the hearing, the trial court issued a ruling finding that Valladares received effective assistance of counsel and that the perceived errors were matters of sound trial strategy. Valladares appealed, arguing that his trial counsel was ineffective. This court affirmed his convictions, rejecting his claim of ineffective assistance of counsel. See *Valladares*, 2013 IL App. (1st) 112010. Valladares once again raised ineffective assistance of counsel claims in his initial postconviction petition that were summarily dismissed. Valladares appealed and we affirmed the trial court’s dismissal. See *Valladares*, 2016 IL App (1st) 1422721-U. Now, in his motion for leave to file a successive postconviction petition, Valladares once again alleges that his trial counsel was ineffective. The trial court denied him leave to file his successive petition, correctly finding that he failed to satisfy the cause and prejudice test. It is axiomatic that Valladares cannot show cause

for failing to raise the claim of his counsel's ineffectiveness in his initial postconviction petition where he in fact raised the claim on numerous prior occasions, including his initial petition.

¶ 20 That said, even assuming Valladares showed cause, he cannot establish that he was prejudiced by counsels' representations at trial. As mentioned, prejudice is established "by demonstrating that the claim so infected the trial that the resulting conviction or sentence violated due process." *People v. Wrice*, 2012 IL 111860, ¶ 48 (quoting 725 ILCS 5/122-1(f) (West 2014)).

¶ 21 Valladares argues that he has shown prejudice because of the ARDC complaints finding his trial counsel was ineffective in unrelated matters thereby confirming that his trial counsel was ineffective during his trial. But, "judicial review regarding ineffective assistance of counsel is performed on a case-by-case basis in an attempt to comprehend counsel's perception and integration of the combination of facts, circumstances, and law unique to that case. *People v. Smith*, 384 Ill. App. 3d 489, 492 (2008).

¶ 22 Again, Valladares's allegations of ineffective assistance of counsel were addressed at trial, on direct appeal, and in his initial postconviction petition. Moreover, Valladares cannot show how these ARDC complaints would be relevant to his trial counsel's effectiveness at his trial. This is especially so where Valladares fails to acknowledge that he was represented by two attorneys at trial and all of Valladares's post-trial allegations and ARDC complaints address the actions and decisions of only one of those attorneys. *People v. Smith*, 177 Ill.2d 53, 90 (1997) (finding, in part, that defendant was not entitled to new trial where his attorney was only representing one client and was assisted by another attorney). Accordingly, where a defendant has failed to satisfy either element of the cause and prejudice test the circuit court did not err in

denying him leave to file a successive postconviction petition. See *People v. Edwards*, 2012 IL App (1st) 091651, ¶ 32 (“Both prongs must be met before leave to file a successive petition will be granted”); 725 ILCS 5/122-1(f) (West 2014).

¶ 23 In reaching this conclusion, we are not persuaded by Valladares’s reliance on *People v. Sanchez*, 329 Ill. App. 3d 59 (2002). Unlike in *Sanchez*, we are not tasked with evaluating whether Valladares’s posttrial claims of ineffective assistance of counsel warranted further inquiry by the trial court and, if so, whether Valladares could supplement his claims with ARDC records for the trial court to consider. Rather, Valladares appeals from the denial of his motion for leave to file a successive postconviction petition. We find that the court properly denied Valladares leave to file a successive postconviction petition under the Act.

¶ 24 Affirmed.